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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

CHURCH OF SCIENTOLOGY INTERNATIONAL, a California not-for-profit religious corporation, Plaintiff, vs. GERALD ARMSTRONG; DOES 1 through 25, inclusive, Defendants.	CASE NO. 157 680 [CONSOLIDATED] PLAINTIFF'S FURTHER REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE THIRTEENTH, SIXTEENTH, SEVENTEENTH AND NINETEENTH CAUSES OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT DATE: September 29, 1995 TIME: 9:00 a.m. DEPT: 1 TRIAL DATE: None set

I. INTRODUCTION

Armstrong's belated memorandum of points and authorities opposing summary adjudication of four of plaintiff's claims for liquidated damages ignores earlier rulings by this Court and by the Los Angeles Court, made **in this case**, and therefore binding upon all of the parties. Indeed, in his memorandum, Armstrong does not even **mention** the breaches complained of by plaintiff, but devotes the entirety of his briefing to: (1) an argument, already rejected by the Court and by Judge Horowitz, that the Church "breached" the agreement by speaking about Armstrong, thereby excusing Armstrong's later breaches; (2) a claim, also rejected previously by this Court, that the liquidated damages provision of the contract should not be presumed valid; and (3) a claim that the agreement was invalid because of the "unequal bargaining power of the parties." As demonstrated below, none of these arguments justifies a reconsideration of this Court's earlier determination that the contract, including the liquidated damages clause, is valid and enforceable.[1]

In the face of overwhelming evidence of each of his breaches, Armstrong has submitted **ten volumes** of "evidence" which does not contradict the evidence as to any **material** issue, but seems instead designed to use the files of this Court as yet another breach of the Agreement. As discussed in plaintiff's concurrently filed motion to strike, neither this evidence nor the separate statements filed by Armstrong on September 18, 1995 should be considered by the court. Although Armstrong is now represented by counsel, he filed **all** of these documents in propria persona, after substituting Mr. Greene as his attorney. Such submissions by a represented party are not permitted, and should be stricken. People v. Mattson (1959) 336 P.2d 937, 952, 57 Cal.2d 777; Electric Utilities v. Smallpage (1934) 137 Cal.App. 640, 31

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[1] Armstrong's arguments concerning additional affirmative defenses, previously rejected by this and other courts, and raised in his separately-filed opposition to plaintiff's motion for a permanent injunction, are addressed in plaintiff's reply to that opposition, and incorporated herein by reference.

P.2d 412. Further, as demonstrated below, none of the evidence submitted by Armstrong in propria persona raises any issue of material fact as to his breaches of the thirteenth, sixteenth, seventeenth or nineteenth causes of action.

II. SPEECH BY THE CHURCH CONCERNING ARMSTRONG DOES NOT EXCUSE ARMSTRONG'S BREACHES OF THE AGREEMENT

Armstrong begins his brief by raising a very old, rejected argument: that the Church's post-settlement conduct is relevant to these proceedings in that it somehow excuses, justifies or mitigates Armstrong's misconduct. Armstrong raised that argument in these proceedings not once, but many times: before Judge Sohigian, when plaintiff sought and obtained a preliminary injunction; before the Court of Appeal, when it affirmed that order; and before this Court, in presenting both affirmative defenses and a (now stricken) cross-complaint. The issue, however, was firmly laid to rest on August 16, 1994, while the case was still in Los Angeles. Armstrong had sued the Church in cross-complaint for breach of contract, claiming that assorted "bad acts" of the church (the same false and tired allegations he makes yet again today) were a "breach" of the settlement agreement, and justified his own breaches of that Agreement. The Los Angeles Court granted the Church summary adjudication of this claim. Although Armstrong argued vehemently that the contract should be interpreted to include a clause prohibiting the Church from commenting on Armstrong, the Court held:

> The Agreement terms are clear and unambiguous. [Armstrong] understood the terms and signed it. The duties and obligations of the Agreement are clearly stated. "Mutuality" and "reciprocal" duties cannot be read into the unambiguous terms of the Agreement.
>
> **There are no provisions in the Agreement prohibiting the [Church] from referring to [Armstrong] with the press or in legal pleadings or declarations.** [Armstrong's] beliefs as to what the Agreement should have said, its validity, or what his attorney said or did to him are not relevant. The Agreement itself acknowledges that no agreements or understandings have been made among the parties aside from those set forth in the Agreement.

[Plaintiff's Request for Judicial Notice, Exhibit E, emphasis supplied].

This legal holding is the law of the case. Armstrong made no effort to seek

reconsideration at the time that the Los Angeles Court issued this ruling, and his attempts to persuade this Court, more than one year later, to overrule this earlier, binding order are improper. Code of Civil Procedure Section 1008. It has already been adjudicated that the Agreement contains **no provisions** which prevent the Church from referring to Armstrong. Armstrong's present argument that he would not have been foolish enough to sign the "one-sided" Agreement, and accept more than half a million dollars, if he had known that the Church could really hold him to his promises is just the same old argument, re-hashed. It should be rejected, along with Armstrong's weighty load of irrelevant and inadmissible "evidence" demonstrating his opinion that the Church is "bad."

III. THIS COURT HAS ALREADY ADJUDICATED THAT THE LIQUIDATED DAMAGES PROVISION IS VALID AS A MATTER OF LAW

Armstrong devotes the bulk of his brief to an argument that the liquidated damages provision should be held to be invalid as a matter of law. Again, this is improper. This Court already considered Armstrong's arguments and ruled, on January 27, 1995, that the liquidated damages provision was valid and enforceable as a matter of law. Armstrong made no motion to reconsider that ruling; it stands as the law of the case. He is simply not permitted to challenge it now. C.C.P. § 1008.

Moreover, Armstrong's argument is deceptive, and sheds no more light on the subject than did his earlier argument on the subject (which was based on repealed law). Armstrong argues, for example, that the Agreement in question should be evaluated pursuant to Civil Code Section 1671(d) because it "controls consumer contracts." [Oppo. at 3] This argument is specious. First, this Court has already found that Section 1671(b), not (d), is the controlling section. [Request for Judicial Notice, Ex. C at 1] Second, the statute itself, which Armstrong does not quote, makes very clear that subsection (d) applies only to very specific circumstances, **none** of which apply here:

> The validity of a liquidated damages provision shall be determined under

subdivision (d) and not under subdivision (b) where the liquidated damages are sought to be recovered from either:

(1) A party to a contract for **retail purchase, or rental, by such party of personal property or services, primarily for the party's personal, family or household purposes**; or

(2) A party to a **lease of real property for use as a dwelling** by the party or those dependant upon the party for support.

[Emphasis supplied]

Third, the Agreement was **not**, as Armstrong intimates, a contract dealing with his "consumption" of Scientology services. It was an agreement settling ongoing litigation. The "context" of the underlying litigation did not arise from Armstrong's "consumption" of Scientology services: it arose from Armstrong's theft, while an employee of a Church-related entity, of valuable Church documents.[2]

Armstrong's argument that the liquidated damages provision should be voided as "unconscionable" is equally specious. As this Court found in January, Armstrong consulted at least two lawyers about the provision before deciding to sign the Agreement [Request for Judicial Notice, Ex. C] He certainly did not lack in bargaining power: he had employed two sizable law firms, one from Boston and one from Los Angeles, to litigate his case and negotiate a settlement on his behalf. Nor was he alone in pursuing his litigation; at the time of the settlement, his lawyers negotiated the settlement of at least 50 cases involving other persons suing various Churches of Scientology. Armstrong cites no case in which a person represented by counsel and entering into a settlement agreement was later able to void a provision in the agreement concerning future breaches as "unconscionable" due to "unequal" bargaining power. None exists. Armstrong's present unhappiness with the legal representation that he received in 1986 is not attributable to the Church and does not void any portion of the agreement. This Court has already so found. [Ex. C]

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[2] Indeed, in a radio interview just last month, Armstrong admitted that he had paid almost nothing for Scientology services, but was instead an employee. [Ex. A to Declaration of Deborah Danos, filed in support of Additional Reply in Support of Plaintiff's Motion for Summary Adjudication of the Twentieth Cause of Action, p. 10.]

Armstrong's final attack on the damages provision -- that it is inapplicable because the Church is not "really" injured by Armstrong's breaches -- has no more merit than his other arguments. The Church paid $800,000 to Armstrong in 1986 in exchange for his silence. His career as an anti-Church litigant and provocateur had already cost Church staff and entities substantially in time and money -- enough that they were willing to pay substantially to end his anti-Church activities. It is quite true that Armstrong's breaches have not destroyed the Church, as Armstrong no doubt would like. However, each of Armstrong's anti-Scientology activities have a cost to its millions of staff and parishioners -- whether it is from the neighbor who won't let her child play with the child of the Scientologists next door, after hearing Armstrong's lies; the parent who, believing Armstrong's outrageous stories, hires CAN deprogrammers to kidnap his grown son; or the local Church Director of Special Affairs, who must spend hours explaining to reporters that her Church's literacy program is most certainly not "neo-Satanic."[3] The Church has kept its bargain with Armstrong, and both sides measured the worth of that bargain in 1986. Armstrong is simply not permitted to re-evaluate it now.

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[3] Armstrong's self-aggrandizement is so boundless that he argues that the Church only litigates this case to "attack" him. This is ludicrous. For years, when Armstrong kept his bargain, the Church took no interest in Armstrong at all. The only comments any Church official made about Armstrong during that period (1986-1990) were comments made to counteract the negative effects of Armstrong's many pre-settlement attacks on the Church, which, like bad pennies, had a tendency to turn up. It wasn't until Armstrong began to attempt to extort more money from Church lawyers in return for continued silence, and when all attempts at resolution short of legal action failed, that this action began at all. And this action would have reached its conclusion years ago, if not for Armstrong's continual delay of the proceedings. Indeed, the reality is that it is Armstrong who creates and perpetuates conflict with the Church. In July, 1993, for example, he wrote candidly to his friend Larry Wollersheim,

"[A]s I mentioned a couple of weeks back, I have registered a treatment of my Scientology experiences for motion picture purposes. I will now forward with a synopsis of the later years to possible producers. This project, I think, will be where many of my hours in the next couple of years will go, and will bring me into direct conflict with the Scientology organization on its beachhead in Hollywood." [Evidence in Support of Separate Statement re Twentieth Cause of Action, No. 70]

IV. ARMSTRONG HAS RAISED NO TRIABLE ISSUE OF MATERIAL FACT AS TO THE THIRTEENTH, SIXTEENTH, SEVENTEENTH OR NINETEENTH CAUSES OF ACTION

To overcome a summary judgment motion, a defendant may not rely on mere allegations or denials in his pleadings:

> [O]nce the plaintiff has met that burden, the burden shifts and, to defeat the motion, the opposing defendant must produce sufficient admissible evidence to raise a triable issue of material fact either as to the cause of action or as to an affirmative defense.

American States Insurance Company v. Superior Court (1994) __ Cal.App.4th ___, 33 Cal.Rptr.2d 616, 619 (Insured could not overcome insurers showing that it was not required to defend by their own "vague, ambiguous and speculative statements").

Further, it is not sufficient merely for a defendant to demonstrate that a factual dispute of some sort exists: if no conflict exists as to any element of plaintiff's claim or as to an affirmative defense, "no amount of factual conflict upon other aspects of the case will preclude summary judgment." Shively v. Dye Creek Cattle Company (1994) __ Cal.App. 4th ___, 35 Cal.Rptr. 238, 241.

Here, Armstrong has not properly filed **any** evidence which contradicts the complete factual showing of four breaches of the Agreement made by plaintiff in the moving papers. As delineated in plaintiff's separately filed motion to strike, and for sanctions pursuant to C.C.P. § 437c(i), none of Armstrong's late-filed evidence should properly be considered at all. All the evidence, and both separate statements, were filed and signed by Armstrong in propria persona after Armstrong substituted Mr. Green as his counsel. A party represented by counsel has no right to file things directly with the Court, and the solution is simply to strike them. In People v. Mattson, supra, for example, the defendant was represented by an attorney, but nonetheless filed documents "which reflect[ed] his misconceptions of and refusal to adhere to established rules of law." 336 P.2d at 952. The California Supreme Court ordered all of his pro per filings stricken, and refused to consider them. Similarly, in Electric Utilities Co. v. Smallpage, supra, the Court of Appeal struck a represented

party's pro per brief, finding that the party had no legal authority to file or appear. 31 P.2d at 413.

So, here, Armstrong has filed voluminous "separate statements" and ten volumes of irrelevant evidence devoted to ad hominem attacks on plaintiff, their counsel and his own former counsel; a mass of irrelevant papers filed in other cases; and a series of vague, speculative conclusions on Armstrong's own part that he should be excused from performance. It is little different from the mass of irrelevant paper which Armstrong filed in January -- it is, however, **five times** the volume, and **not** filed by his counsel.

Even if the Court considers this mass of irrelevant information, however, Armstrong still has failed to raise a single issue of material fact as to any of the four causes of action. The validity of the contract, plaintiff's performance, and the genuineness and meaning of its provisions have already been adjudicated by this Court. As demonstrated below, Armstrong has further **admitted** each of the specific breaches alleged, but attempts to excuse each of them in some unique way. None of Armstrong's justifications for his breaches raise any issue of material fact.

A. The Thirteenth Cause of Action

Armstrong admits, as alleged in the thirteenth cause of action that he gave a videotaped interview in November, 1992, in which he discussed his alleged Scientology knowledge and experiences for **95 minutes**. [Arm. Sep.St., pp. 16-21, Nos. 5-9]. He asks the Court to excuse him from the breach, however, because he went to the conference in Los Angeles at which he gave the interview "for psychological support and for defense," and that only the alleged actions of demonstrators he claims were Scientologists "attacking" him and "other innocent conferees" prompted him to give the interview. [Arm.Sep.St. at 21-22, No, 9A]

Needless to say, this allegation, even if true, offers no legal justification for Armstrong's breach. Moreover, this statement, made by Armstrong under oath in yet

another declaration, contradicts the earlier statements made by Armstrong **on the videotape itself.** There, Armstrong said,

> [The Agreement] is unenforceable hence I feel that I am completely at liberty to associate with whomever I want, to talk to whomever I want, and I act in life that way. **And that is in part why I am here at this event now, why I came to the CAN conference.**

[Sep.St.No. 9]

Armstrong's later declaration may not be used to contradict his earlier statement to overcome a summary adjudication. In the words of the First District, "In reviewing motions for summary judgment, the courts have long tended to treat affidavits repudiating previous testimony as irrelevant, inadmissible or evasive." Advanced Micro Devices, Inc. v. Great American Surplus Lines Ins. Co. (1988) 199 Cal.App.3d 791, 800-801, 245 Cal.Rptr. 44. This is because

> [A]dmissions against interest have a very high credibility value. . . Accordingly, when such an admission becomes relevant to the determination, in motion for summary judgment, of whether or not there exist triable issues of fact (as opposed to legal issues) between the parties, it is entitled to and should receive a kind of deference not normally accorded evidentiary allegations in affidavits.

D'Amico v. Board of Medical Examiners (1974) 11 Cal.3d 1, 21, 112 Cal.Rptr. 786.

Armstrong's admission that he came to the conference to breach his agreement is, accordingly, entitled to special deference, and his later sworn statement that the actions of others prompted him to give his videotaped interview should be disregarded.

Plaintiff is entitled to summary adjudication of the thirteenth cause of action.

B. The Sixteenth Cause of Action

Armstrong has agreed that it is **undisputed** that he gave an interview in June, 1993, concerning his claimed Scientology knowledge and experiences to Charles Fleming, a reporter for Newsweek magazine. [Arm.Sep.St. at 24, No. 10] He has also admitted that he talked to Mr. Fleming about L. Ron Hubbard, and about Larry Wollersheim's case against the Church of Scientology of California. [Id., at 24-25,

Nos. 11, 12]

Armstrong tries to "excuse" this breach by arguing (1) some of the things he spoke to Mr. Fletcher about were things he learned after signing the Agreement; (2) he wanted to talk to Mr. Fletcher about how "bad" he considered it that a text he considered to be religious and related to Scientology would be allowed in schools, when, in his opinion, Scientology is contradictory to Christianity; and (3) Scientology is, in his opinion, bad.

None of these arguments raise any issue of **material** fact as to this cause of action. Armstrong has admitted that his speech to Mr. Fleming concerned his claimed knowledge of and experiences with Scientology. That some of that experience supposedly occurred after 1986 is irrelevant. He has already admitted that some of his remarks were about pre-1986 events. Moreover, this Court has already held that the Agreement prohibits Armstrong from discussing **any** Scientology knowledge or experiences, however, or whenever gotten. [Request for Judicial Notice, Ex. C] Those are the plain, uncontradicted terms of the Agreement. Further, Armstrong's opinions concerning Scientology doctrine or philosophy (which are diametrically opposed to the Church's view of its own doctrine and philosophy) are equally irrelevant. Armstrong's reasons for talking to Mr. Fleming do not matter. He spoke to Mr. Fleming in deliberate, knowing, and flagrant breach of the Agreement. His claimed motives are irrelevant, and the "evidence" concerning them should be disregarded.

Plaintiff is entitled to summary adjudication of the sixteenth cause of action.

C. <u>The Seventeenth Cause of Action</u>

Armstrong does not dispute that he gave an interview to E!TV reporters in August, 1993, concerning his claimed Scientology knowledge and experiences, or that he gave them a manuscript for a screenplay which details his claimed Scientology experiences. [Arm.Sep.St. p. 30-311, Nos. 14-16] Armstrong's only

excuse for this one is that he was being sued by this time, that people were saying bad things about him, and he wanted "to clear his name." [Arm.Sep.St.No. 16A] None of this "evidence," which consists entirely of Armstrong's hearsay and contradictory statements about what other people said about him, has any bearing whatsoever on this breach of the Agreement. It is admitted by Armstrong.

Plaintiff is entitled to summary adjudication of the seventeenth cause of action.

D. The Nineteenth Cause of Action

Armstrong fences with details concerning the nineteenth cause of action, but admits that he agreed to be an expert witness for Graham Berry on the subject of Scientology, and that he provided Berry with two declarations discussing his claimed Scientology knowledge and experiences. [Arm.Sep.St. pp.34-38, Nos. 17, 22] These admissions are sufficient to entitle plaintiff to summary adjudication, even without Armstrong's invented disputes, such as whether he met with "would be" or "honest to God" witnesses [Id. at 37.] In his "additional facts," Armstrong confuses the preliminary injunction with the Agreement, and argues that he was "entitled" to respond to a lengthy declaration of a Scientology official which mentioned him on a single page. As demonstrated in Part II, supra, the Church's statements cannot be used to excuse Armstrong's breaches, and do not supply any contradictory issue as to a material fact. Indeed, none of the lengthy argument attacking the Church and its leaders which is found in Armstrong's improper papers raises a single issue of material fact.

Plaintiff is thus entitled to summary adjudication of the nineteenth cause of action.

V. CONCLUSION

Armstrong has admitted to four separate breaches of the Agreement which require him to pay the Church a combined amount of $200,000 in liquidated damages. In his opposition, he has not provided substantial evidence of any disputed

issue of material fact. Plaintiff is, accordingly, entitled to summary adjudication of its Thirteenth, Sixteenth, Seventeenth, and Nineteenth Causes of Action, and it is entitled to entry of judgment on those claims in the amount of $200,000.

Dated: September 25, 1995

Respectfully submitted,

MOXON & BARTILSON

By: 
Laurie J. Bartilson

Andrew H. Wilson
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Attorneys for Plaintiff
CHURCH OF SCIENTOLOGY
INTERNATIONAL

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On September 25, 1995, I served the foregoing document described as PLAINTIFF'S FURTHER REPLY IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF THE THIRTEENTH, SIXTEENTH, SEVENTEENTH AND NINETEENTH CAUSES OF ACTION OF PLAINTIFF'S SECOND AMENDED COMPLAINT on interested parties in this action, by sending a true copy by hand to:

FORD GREENE
HUB Law Offices
711 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

and by U.S. Mail to:

MICHAEL WALTON
700 Larkspur Landing Circle
Suite 120
Larkspur, CA 94939

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 25, 1995 at Los Angeles, California.

_____ _____

Print or Type Name Signature